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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20 CR 15 (PKC)

5 VIRGIL GRIFFITH,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 September 14, 2021  
4:40 p.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS,

15 United States Attorney for the  
Southern District of New York

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17 Assistant United States Attorneys

18 BRIAN EDWARD KLEIN

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Attorneys for Defendant

L9EKGRIC

(Case called)

MS. RAVENER: Good afternoon, your Honor. Kimberly Ravener and Kyle Wirshba, for the government.

THE COURT: Good afternoon to you both.

And for the defendant?

MR. KLEIN: Good afternoon, your Honor. Brian Klein, with Keri Axel and Sean Buckley, and sitting next to me is the defendant, Virgil Griffith. He's in custody.

THE COURT: Good afternoon to you all. Thank you for accommodating me. I am trying a case in Courtroom 23B of this courthouse, and we broke early with the jury, and I appreciate your accommodating my schedule.

So let's talk about motions in limine.

I have received and reviewed the motions, the responses to the motions, and I assume the parties have said what they wanted to say in their motion papers.

Is that correct, for the government?

MS. RAVENER: It is, your Honor.

THE COURT: For the defendant?

MR. KLEIN: Yes, your Honor. We may want to add a little bit on --

THE COURT: Sure. No, go right ahead.

MR. KLEIN: Your Honor, because there have been other filings since the time of that filing, in particular, the government has filed things related to its expert and raised

L9EKGRIC

1 different issues, and I think one of the motions they filed was  
2 to exclude the defense from introducing into evidence our  
3 argument what they term extraneous evidence regarding the DPRK.

4 THE COURT: All right. Well, we'll get to that, and  
5 when we get to that, you'll let me know what you want to raise.

6 But, first, let's start with the argument on  
7 statements. Is there anything you wanted to add on that,  
8 Mr. Klein?

9 MR. KLEIN: In terms of our opposition?

10 THE COURT: Yes.

11 MR. KLEIN: No.

12 THE COURT: Okay.

13 So, first of all, I think the defense is correct in  
14 the following respects:

15 Number one, that I don't know, and they don't know,  
16 the full extent of statements that are being offered, nor they  
17 say are they in a position to have a view on authenticity. And  
18 I'll add on to that, that with regard to 403 considerations, I  
19 don't fully know whether or not something may have -- the  
20 probative value may be outweighed by, for example, danger of  
21 unfair prejudice or jury confusion in all instances. I can't  
22 possibly know that.

23 But there is a fundamental point to start with, and  
24 that is with regard to the indictment in this case, and there  
25 is an argument that Griffith's initial attempts to develop what

L9EKGRIC

1 the government calls cryptocurrency infrastructure in the DPRK  
2 is excludable. And reading the flavor of the briefs that have  
3 been submitted in this case, it is as if Mr. Griffith was  
4 charged with conspiracy to attend a conference in the DPRK.  
5 That's the crime he's charged with committing.

6 That's not what the grand jury indicted him for.

7 So let's begin with the first principles. The grand  
8 jury indicted him for participation in a conspiracy, from at  
9 least in or about August 2018 up to and including in or about  
10 November 2019, to conspire to violate licenses, orders,  
11 regulations, and prohibitions in the IEEPA, and that's the  
12 charge, and there are two objects. One is that it was part of  
13 the conspiracy that Griffith and others would and did provide  
14 and cause others to provide services to the DPRK. That's one  
15 of the two objects. The second object is that Griffith and  
16 others conspired to evade and avoid and attempt to evade and  
17 avoid the requirements of U.S. law with respect to providing  
18 services to the DPRK.

19 So those are the two objects of the conspiracy that  
20 runs from August 2018 up to 2019.

21 Now, the government says it is seeking to offer  
22 statements in the period of February 2018 through June of 2018,  
23 and they are not during or in furtherance of the conspiracy.  
24 They don't come in as proof, direct proof, of conduct during  
25 the conspiracy. They are, however, it seems to me, the ones

L9EKGRIC

1 that have been tendered, background to the conspiracy, and,  
2 further, they are not hearsay because, under 801(d)(2), they're  
3 offered against the opposing party and they're party  
4 statements.

5 So, for example, the government wants to offer the  
6 February 17th, 2018 message to CC3, and he asks CC3 whether he  
7 knew anyone in North Korea, we'd love to make an Ethereum trip  
8 to DPRK to set up an Ethereum node, and he adds that it will  
9 help them circumvent the current sanctions on them.

10 Well, the message has nothing whatsoever to do with  
11 the fact that the Singaporean later on, the government  
12 contends, became a member of the conspiracy. That's not why  
13 this comes in; it comes in as a party statement and as  
14 background to the conspiracy.

15 Similarly, with regard to the April 2018 emails,  
16 Virgil is the guy who would like to get the node started, and  
17 Griffith then wrote to CC4 that he was willing to spend \$8,000  
18 on ItNix, explain the steps "buying the mining rig, ship it to  
19 them, pay someone or some entity to continue maintaining it."

20 The statements of others cannot be admitted for the  
21 truth of their content. And it seems to me that Griffith's  
22 statement comes in; the other statements only comes in in the  
23 context of shedding light on what it is that Griffith is  
24 saying, and they're not for their truth. So that's where I  
25 come out. There's a continued exchange on or about that date

L9EKGRIC

1 with other statements, but the gist of it is that party  
2 statements by Griffith are not hearsay and they're relevant as  
3 background to the conspiracy.

4 The same, June 30, 2018, Griffith emails CC5, tells  
5 CC5 he's seeking for and introducing potential business  
6 partners or personnel to the company, and he says that it's an  
7 exchange about the South Korean government being open to  
8 supporting The Ethereum Foundation. Now, here, on this email,  
9 I'm not sure if it's probative of anything relative to the  
10 background to the conspiracy, and so I have to reserve on  
11 something like that. I don't know whether it's relevant or  
12 not; it may not be.

13 Now, with regard to the August 7th exchange, this  
14 is -- of course, the grand jury says that the conspiracy  
15 started in or about August 2018 and the August 7th exchange is  
16 with CC4, but I cannot determine that CC4 was then a member of  
17 the conspiracy. I don't have any basis to conclude that. But  
18 Griffith's statements would come in as party statements,  
19 background, and CC4's and CC5's would be necessary in order to  
20 understand what Griffith is saying, not for the truth of their  
21 content.

22 August 24, 2018, Griffith writes a long paragraph to  
23 CC5 asking if South Korea wanted to curry our favor by setting  
24 up the DPRK node because we would do it myself, ourselves, but  
25 we're scared of the sanctions. It seems to me that South Korea

L9EKGRIC

1 is allowed to violate those sanctions. I've been asked to step  
2 away from the project, but if you ever see a lead to do this,  
3 we'd love you for it. That comes in as a party statement.

4 CC5's response, it's quite sensitive, so I have to be  
5 careful, too – I don't think that comes in because, first of  
6 all, it's not a coconspirator statement at this point. CC5  
7 hasn't been shown to have joined the conspiracy. And it's not,  
8 as far as I can tell, necessary to the understanding of  
9 Griffith's statements on August 24, 2018.

10 On September 23, 2018, Griffith emails an individual  
11 asking if he would be interested in setting up the DPRK node  
12 and forwarding some of the CC4 communications. That comes in,  
13 again, as a party statement, at least on background; it's not  
14 conspiratorial conduct, but it certainly comes in as a party  
15 statement. Whether there is any other evidentiary basis for  
16 it, I can't say at this stage.

17 And, certainly, messages by Griffith to a DPRK email  
18 account asking, can Americans attend the conference, yes, no  
19 problem – this is a statement during, and in furtherance of,  
20 the conspiracy.

21 Now, with all statements made during and in  
22 furtherance of the conspiracy, they're subject to connection.  
23 They are subject to the strictures of the *Bourjaily* case and  
24 the case law under *Bourjaily*, so they're all subject to being  
25 stricken if, at the end of the government's case, I cannot find

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1 by a preponderance of the evidence that the declarant was a  
2 member of the conspiracy when the statement was made and that  
3 the statement was during and in furtherance of the conspiracy.

4 But preliminarily, and subject to that statement, the  
5 August 27, 2019 communication from CC2 to Griffith would seem  
6 to come in.

7 The August 31, 2019 statement is not by a member or a  
8 purported member of the conspiracy; it's just an individual who  
9 asks why is Griffith willing to risk his safety to go to the  
10 DPRK, and he responds: DPRK wouldn't want to scare away  
11 blockchain talent. That'll let them get around sanctions.

12 So individual 3's statement is not for the truth of  
13 its content, but Griffith's statement is a party statement.

14 Then we have the DPRK invitation that's proof of the  
15 conspiracy listing CC1 and CC2 as organizer and technical  
16 advisor. Certainly the December 19, 2019 initial payment comes  
17 in.

18 The January 24th, 25th, and 27th exchanges are, at  
19 minimum, party statements bearing on Griffith's intent, even to  
20 the extent that they're with Individual 4, who was not a member  
21 of the conspiracy they still are party statements.

22 The February 14 communication with CC1 is, it appears,  
23 likely a statement by a coconspirator during and in furtherance  
24 of the conspiracy, as is Griffith's communications on  
25 February 18th, February 28th, and March 7th of 2019.



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1           There were statements made by Griffith and others  
2 during the conference, and they are direct proof of the  
3 conspiracy. To the extent they are statements by persons who  
4 were not coconspirators, they come in for the fact that they  
5 were said, because it's part of the back-and-forth and the  
6 interchange, and if they're coconspirators, then they're  
7 potentially in furtherance of the conspiracy.

8           Likewise, the communications on April 20, 26th, 27th,  
9 and May 14th look like they're likely statements during and in  
10 furtherance of the conspiracy, except for the April 26th to  
11 Griffith's parents, which is nothing more than a party  
12 statement, not a coconspirator statement.

13           And, similarly, the statements made by Griffith to law  
14 enforcement on May 22nd, 2019, November 6th and November 12th,  
15 2019, they're party statements.

16           Now, with regard to the May 23rd, 2019 exchange, this  
17 is about you should get your taxes in order, that ordinarily, I  
18 would say, would not come in if that's all it was about, it  
19 would not even come in for the truth of its content, but it's  
20 Griffith's response that makes this relevant in terms of  
21 consciousness of guilt. The email could be reasonably read to  
22 indicate he's not at all concerned about taxes, but his  
23 engaging in other conduct could result in his imprisonment.

24           The statements, again, from August 4th, 2019,  
25 August 5th, August 7th, August 9th, October 2, October 28, and

L9EKGRIC

1 November 2018 -- well, let me leave November 2018 out -- the  
2 ones I just mentioned, they're either coming in as statements  
3 and the rest of the conversation with the other party to the  
4 conversation is coming in, either to make the statement, party  
5 statement, understandable, or some of them, for example, with  
6 CC2, may come in, and CC1, for the truth of their content.

7 With regard to the November 18 communication, I  
8 discovered I didn't file a tax return for 2015-2018, but,  
9 weirdly, the IRS hasn't contacted me, that's out. I don't see  
10 where -- the probative value to that is outweighed by the  
11 danger of unfair prejudice, so I'm excluding that.

12 November 17 comes in as a party statement.

13 So that's where I am on the statements, and I have  
14 some sympathy for what the defense says, that they don't know  
15 the full context, they don't know the foundation, et cetera.  
16 Some of that may be developed at trial, and there may be  
17 instances where you'll be able to persuade me that something that  
18 didn't strike me as having a 403 dimension does in fact.

19 Now, is there something the defense wanted to say on  
20 the DPRK's cryptocurrency capabilities?

21 MR. KLEIN: Yes, your Honor.

22 THE COURT: Okay. Go ahead.

23 MR. KLEIN: So, your Honor, the government moves,  
24 going back where I started, to preclude what they consider  
25 extraneous evidence.

L9EKGRIC

1 THE COURT: Right.

2 MR. KLEIN: And their response or the reasons they  
3 outline why were because when we engaged in pretrial motion to  
4 compel litigation, there was a stipulation they agreed to enter  
5 into, and I think your Honor is well aware of that stipulation.  
6 Again, that was over a discovery dispute. This trial is about  
7 cryptocurrency, a blockchain, in North Korea. So any evidence  
8 that the defense would want to offer about that would seem  
9 highly relevant, particularly because it's focused around the  
10 proper time frame, which it is.

11 THE COURT: Relevant to what issue?

12 MR. KLEIN: Relevant to the issue of services,  
13 relevant to the issue of --

14 THE COURT: How is it relevant to the issue of  
15 services?

16 MR. KLEIN: Sure, your Honor.

17 So, again, it goes to the stipulation where the  
18 government said they won't present evidence or argument that  
19 the information my client allegedly provided in the  
20 cryptocurrency conference was not -- I'm just reading from it,  
21 your Honor, sorry -- was beyond the then existing capabilities  
22 and knowledge of the government of North Korea. And so one  
23 thing we want to show, your Honor, is that North Korea  
24 possessed tremendous cryptocurrency and blockchain capabilities  
25 prior to Mr. Griffith's visit.

L9EKGRIC

1 THE COURT: Why is that relevant?

2 MR. KLEIN: Because then it would not -- he's not  
3 providing the service, your Honor.

4 THE COURT: Okay. Thank you. That's what I was  
5 asking.

6 MR. KLEIN: Sorry.

7 THE COURT: Well, because it's not obvious, but I  
8 wanted to find out what your reason was because I didn't want  
9 to misinterpret.

10 Okay. Go ahead.

11 MR. KLEIN: And even with this stipulation, your  
12 Honor, the government can clearly leave the impression -- and  
13 they want to -- they do plan to present evidence that certain  
14 individuals at the conference gained information new to them.  
15 That's included in our stipulation. So they do plan to present  
16 evidence like that, and they're also going to call an expert to  
17 talk about North Korea. Presumably, some of these issues will  
18 be ripe for discussion with their expert, if you permit their  
19 expert to testify.

20 THE COURT: All right.

21 Just bear with me. Are you finished?

22 MR. KLEIN: I think so, your Honor.

23 THE COURT: Okay. Just bear with me a moment.

24 (Pause)

25 THE COURT: All right. Much of this case is about the

L9EKGRIC

1 fact that the defendant's position is that what he provided was  
2 information, not services, correct? That's what the defendant  
3 has argued already to me in this case. Correct?

4 MR. KLEIN: Yeah, we've described it as services and  
5 information, your Honor, but --

6 THE COURT: All right. Well, services that amount to  
7 only information, right?

8 MR. KLEIN: Yes.

9 THE COURT: Because if it's services that are more  
10 than information, then it's services, you're not in the  
11 protected zone, right?

12 And the government argues that you're outside that  
13 protected zone.

14 Now, I want to give you a hypothetical, and  
15 hypotheticals always have problems associated with them, and I  
16 realize that. But the point is, it illustrates, to me at least  
17 in thinking about it, to what extent is it relevant, from the  
18 government's standpoint or your standpoint, what technical  
19 capabilities the North Koreans had in cryptocurrency.

20 So here's the hypothetical:

21 So Country A is a country that is subject to similar  
22 types of or the same type of sanctions that we're dealing with  
23 here, and a technician in Country A downloads a manual on how  
24 to repair a Dell laptop computer, downloads it from the  
25 internet, distributes it to fellow technicians, and over time

L9EKGRIC

1 and with practice, 20 technicians in Country A develop the  
2 ability to repair Dell laptop computers.

3 Now, thereafter, a lone U.S. citizen travels to  
4 Country A to repair a Dell computer, and attempts to do so.  
5 That conduct is services even though there are 20 technicians  
6 in Country A who are capable, equally capable, of doing the  
7 same thing. That's hypo one.

8 Hypo two: A lone U.S. citizen travels to Country A  
9 and delivers a manual and then leaves, delivers the Dell repair  
10 manual, and leaves. That appears to me to be information, not  
11 services, and that doesn't turn on whether 20 people have the  
12 manual or no one in Country A has the manual. In both of those  
13 instances, it's services by means of information which is not  
14 criminal conduct, arguably.

15 So that's my hypothetical, and it leads me to the  
16 conclusion that it does not matter whether or not the DPRK had  
17 capabilities in cryptocurrency. As in the first hypothetical,  
18 there are 20 people in Country A who can repair Dell laptop  
19 computers, but a U.S. person travels there with the purpose and  
20 intent of repairing a Dell computer, it's not a defense that 20  
21 people in that country could have done so. By the same token,  
22 if it's delivering the manual, and it's only information, it  
23 doesn't become a crime because no one in that country had the  
24 manual; if the manual was available, and it's nothing other  
25 than preexisting information that is being delivered, the same

L9EKGRIC

1 way a copy of the U.S. Constitution, a copy of the Bible,  
2 whatever it may be.

3 So I won't ask the pointed question. I'll ask you to  
4 react, and then I'll give the government an opportunity to  
5 react.

6 MR. KLEIN: Your Honor, can I have a moment to talk  
7 with my colleagues?

8 THE COURT: Sure.

9 (Pause)

10 MR. KLEIN: Your Honor, thank you for that moment to  
11 confer with my colleagues.

12 So I do appreciate these hypotheticals, and I  
13 understand that this case poses a lot of interesting, novel,  
14 and somewhat complex issues.

15 I think, in addressing the first hypothetical, that's  
16 not the case here, as we know. My client isn't accused of  
17 doing some sort of physical labor in a country, fixing like a  
18 plane or a car or anything like that.

19 When I get to number two, your Honor -- when we get to  
20 number two, and we think about what you're asking, which I  
21 think is a good question, I think what we're getting to is that  
22 the government's theory is that the information they allege my  
23 client, our client, is providing at this conference is new  
24 information, and that's what's different between, and in one  
25 and two, the information in the manual because the manual comes

L9EKGRIC

1 after, right? It's not new information.

2 THE COURT: Yes, well, I gave it actually both ways.  
3 He comes with the manual, and if 20 people already have the  
4 manual or no one has the manual, it's still information. So,  
5 in a way, I'm agreeing with your point, I think. I'm probably  
6 disagreeing more with the government on this.

7 MR. KLEIN: Yes, your Honor, and we always appreciate  
8 that, when that happens.

9 THE COURT: Of course.

10 MR. KLEIN: But I would also say, and, again, what's  
11 also different, and I would point this out, and I think your  
12 Honor understands this, the information allegedly provided was  
13 readily and publicly available. So this Dell manual in your  
14 hypothetical may not have been readily and publicly available,  
15 but - and, again, it goes to our expert - the information  
16 provided in this case, if the government can prove it was  
17 provided, was something that is the first click on Google, was  
18 well-known and publicly available information.

19 THE COURT: All right.

20 Let me say, Mr. Klein, that that's an issue I haven't  
21 gotten to, and I'm suspecting -- I don't know whether it will  
22 be a jury question on the difference between, in my  
23 hypothetical, he physically has the manual in hand. You're  
24 raising a worthy point that I'm not deciding right this second,  
25 about what does it mean to access something on Google versus to



L9EKGRIC

1 have already accessed it. I'm not going there.

2 But from your side of the table, let's start with the  
3 more optimistic one, which is if they had 20 copies of the  
4 manual, or they had no copies of the manual, they never heard  
5 of the manual, and someone puts it on the table and delivers it  
6 to them, they never heard of it, this manual has much greater  
7 value to them, but it's information in either of those  
8 instances. Whether they had the capability or they didn't have  
9 the capability, it's information, and, therefore, if it's  
10 solely information, there is not a crime. That's what I'm  
11 agreeing with. I think you're urging that, unless I'm missing  
12 something here.

13 MR. KLEIN: We are urging, your Honor, that this was  
14 not a crime, yes.

15 THE COURT: Well, I know that, but for that reason.  
16 That's more important to me. I understand you hear sweet words  
17 like "not a crime," but it's the logic that I'm asking whether  
18 you agree with.

19 MR. KLEIN: Your Honor, we do agree -- and, again, I  
20 know this is parsing it because it is somewhat complex, but we  
21 do agree that there was not a crime committed here because the  
22 information Mr. Griffith allegedly provided was not a service,  
23 and as I explained earlier, it was not new information, it was  
24 well-known publicly available information.

25 THE COURT: All right. Thank you.

L9EKGRIC

1           Let me hear from the government. I've heard the  
2 defendant's viewpoint. I don't mind spending a little bit of  
3 time on this because this is the heart of the case, I think.

4           So what's the government's position?

5           MR. WIRSHBA: Your Honor, the government's position is  
6 that the Court has set out in its hypotheticals what the  
7 government understands to be an accurate description of the law  
8 and that those hypotheticals would directly speak to the issue  
9 that we're talking about here, which is whether or not there's  
10 relevance to the cryptocurrency capabilities of the DPRK as a  
11 whole.

12           Of course, the government disagrees about what it was  
13 that was actually done within North Korea, for example, and  
14 whether or not that would fall within the information or  
15 informational materials exception, of course, but with respect  
16 to the Court's hypotheticals, the government believes that the  
17 Court is spot on, and that what those hypotheticals show is  
18 that there is no relevance to the cryptocurrency capabilities  
19 of the DPRK as a whole or individuals with whom -- within the  
20 DPRK, but with whom Mr. Griffith never came in contact.

21           THE COURT: You want to respond, Mr. Klein?

22           MR. KLEIN: Your Honor -- I apologize, I was just being  
23 handed a noted by my cocounsel -- I think that he's summing up  
24 our view again, and I think this is right, which is, their case  
25 is premised on the idea that our client provided info to the

L9EKGRIC

1 DPRK to do things and that information was a service, right?  
2 And that's where we land.

3 THE COURT: When you threw in the "right," please  
4 don't do that to me because it poses a burden on me -- if I'm  
5 silent, then you must have agreed with me or something.

6 MR. KLEIN: Your Honor, I'm not --

7 THE COURT: I know, I know, it's a habit some people  
8 have.

9 Thank you, Mr. Klein.

10 So where I come out is -- and the door is going to  
11 swing both ways on a lot of this, but, no, the defense cannot  
12 offer evidence as to DPRK capabilities, and neither may the  
13 government. That's my ruling.

14 Now, it also comes up -- and I will jump ahead, but  
15 it's a logical jump ahead, and I apologize for jumping ahead,  
16 but the government wants to offer an expert, if I understand  
17 it, or you want to preclude them from offering an expert on  
18 such things as Korean nuclear capabilities or the like or why  
19 or how North Korea got on a prohibited list. That strikes me  
20 as being no more relevant in this case than a prosecutor in a  
21 fentanyl case wanting to explain why there are laws against  
22 controlled substances and why and how fentanyl got on the list  
23 or heroin got on the list. That doesn't come into evidence.  
24 The Court instructs on the law, and it's not probative evidence  
25 of anything. It seems to me the government is allowed to offer

L9EKGRIC

1 evidence that they have to prove as part of their case that  
2 there is a restriction and the restriction is proven by  
3 whatever listing North Korea is on. So it can briefly do that,  
4 but not why it's on a listing or on an embargo; that's not what  
5 we're going to do here.

6 To the extent it has any probative value, it's  
7 outweighed by the danger of unfair prejudice.

8 And, similarly, I come out the same way as to the  
9 Berman Amendments. The Berman Amendment are relevant in this  
10 case. They're relevant as a legal doctrine in this case.  
11 That's for the Court to instruct. It's not why we have Berman  
12 Amendments, it's not why we have an embargo on North Korea;  
13 it's North Korea is a prohibited country and information is  
14 protected. And my job, as the judge, is to communicate these  
15 concepts to the jury clearly, maybe even repetitively, I don't  
16 know, but that's where I come out on that for both an expert on  
17 generally an explanation of why there is an IEEPA and why  
18 North Korea is on it.

19 Does the government want to comment on any of that?  
20 Do you accept my ruling, or do you want to tussle?

21 MS. RAVENER: Your Honor, we accept the Court's ruling  
22 with respect to those parties.

23 I think there are two points that I'd seek to clarify,  
24 and if I'm getting ahead of the Court, please --

25 THE COURT: No, go ahead.

L9EKGRIC

1 MS. RAVENER: One is that with respect to the  
2 government's proffer of an expert witness, we did propose some  
3 other areas for Dr. Arrington's testimony that relate, for  
4 example, to --

5 THE COURT: Juche.

6 MS. RAVENER: -- Juche.

7 THE COURT: No, I read the Second Circuit's case law.  
8 I think the latest one was Judge Hall's decision in United  
9 States against Mejia. I don't know if that's the last one or  
10 the last big word in that area, and certainly experts can  
11 explain the meaning of terminology. That is not controversial.

12 MS. RAVENER: Understood, your Honor. That's very  
13 helpful to us and --

14 THE COURT: I probably said the word wrong. It's not  
15 Juche, but whatever it is.

16 MS. RAVENER: I can confess that the entire government  
17 team has been practicing to get that right, and I can't say  
18 that we have it right either, but Juche, I believe.

19 THE COURT: Okay. Whatever it is.

20 MS. RAVENER: So, Judge, thank you for that, and we'll  
21 adhere to those parameters. Of course, if the Court has more  
22 specifics...

23 With respect to the defense experts, I would just seek  
24 some further clarification as well. We concur that testimony  
25 regarding the scope, for example, of the Berman Amendment is

L9EKGRIC

1 not appropriate from a witness, that that's left to the Court's  
2 instructions.

3 There are other areas along what we believe to be  
4 precisely the same lines with its expert for precisely the same  
5 reasons that the defense has proposed with respect to their  
6 OFAC expert, a former OFAC official. We did move to preclude  
7 that testimony --

8 THE COURT: Well, I understand. This is the  
9 under-enforcement expert?

10 MS. RAVENER: Correct.

11 THE COURT: Which the defendant argues is relevant to  
12 lack of intent. And I know that there was a decision, I  
13 believe, by Judge Nathan and one by Judge Keenan, which I've  
14 looked at, and I don't think either one of them answers -- no  
15 disrespect to my colleagues, they didn't need to answer the  
16 question that I'm faced with. But it does strike me -- again,  
17 I apologize for how my brain works, all right? Everybody's  
18 brain works differently. So when I try to think about that, I  
19 do think of analogies. And the analogy that comes to mind is  
20 an illegal reentry by a person previously convicted of a  
21 serious offense, and that's a crime.

22 It would strike me that it is no defense to that crime  
23 that a defendant said, oh, I committed that -- I did that under  
24 the presidential administration of President A, not the  
25 presidential administration of President B, and I knew

L9EKGRIC

1 President A was not big on enforcing the laws, so I didn't  
2 commit the crime. That strikes me as not relevant evidence and  
3 not admissible.

4 Now, what else they want to say in response -- I mean,  
5 the nice thing here is the defendant's case comes after the  
6 government's case. Who knows what doors the government may  
7 open. I don't know, and I'm not going to get too deeply into  
8 confining you until I know what doors have been opened, but my  
9 take is that under-enforcement evidence is not relevant  
10 evidence in this case.

11 So let me talk about the personal wealth and  
12 cryptocurrency holdings of Mr. Griffith. And the government  
13 does not intend to offer such evidence. They have some  
14 discrete items of evidence about possible funding of a mining  
15 node for 8 or 10 thousand dollars and funding travel to the  
16 DPRK. That seems to be of a different category, and that would  
17 come in. But the government is not allowed, and will not be  
18 permitted, to offer evidence that Mr. Griffith did or did not  
19 get rich on cryptocurrency or otherwise. It's just not  
20 relevant in this case.

21 The crack statement, in jest, "I'll try to be wealthy  
22 enough to pay my bail" is relevant even as a jest, not to show  
23 he is wealthy or he's planning to become wealthy; it's a  
24 statement of, yeah, I know I'm at risk of getting arrested.  
25 That's why it's relevant. It goes to consciousness and intent.

L9EKGRIC

1 So that's why I'm not going to exclude that.

2 And, again, the defense moves to exclude evidence  
3 regarding involvement with Tor and the dark web. Well, the  
4 government is not going to be permitted to wander into this  
5 area and describe the defendant as a man who frequents the dark  
6 web, ladies and gentlemen, and you can only wonder what that  
7 might mean. That's not going to happen in this trial. There  
8 are specific items, for example, on the defendant's CV that may  
9 be relevant, but the defendant has to -- rather, the government  
10 has to show me why they are relevant. I don't know why they  
11 are relevant.

12 I mean, there is an email that Griffith sent to an  
13 individual who worked for a dark web entity where he says: I  
14 once mentioned to you the idea of doing a node in the DPRK. I  
15 was going to put an Ethereum node there, but I eventually  
16 decided it was too edgy and decided against it. However, Tor  
17 doesn't mind being edgy in these ways. If Torservers.net or  
18 others would like to crowdfund putting a Tor node in the DPRK,  
19 I'd bet they'd do it under the same conditions described below,  
20 et cetera.

21 That evidence comes in, and in that sense, I guess the  
22 reference to Tor on his resume makes sense. Why and where does  
23 the term dark web come in and why should it be mentioned in  
24 this trial at all?

25 MS. RAVENER: Your Honor, I'm not sure that the



L9EKGRIC

1 government does intend to elicit it. I'll just reserve that.  
2 To the extent the defense does present evidence from a  
3 purported cryptocurrency expert that touches on areas that  
4 could open that door, we would reserve our right in our  
5 rebuttal case.

6 THE COURT: Right.

7 MS. RAVENER: But with respect to our case in chief,  
8 I'm not sure that we intend to offer much, if anything, on this  
9 subject --

10 THE COURT: Well, you'll let me know before you offer  
11 anything or the words come out of your mouth or are shown to  
12 the jury. You'll flag it for me ahead of time.

13 MS. RAVENER: We can do that, your Honor. And you've  
14 identified the one email and the CV, which are the documents  
15 that we currently have in mind.

16 THE COURT: All right. Okay.

17 So I've already discussed DPRK's nuclear program,  
18 et cetera.

19 Where it comes in, to a limited extent -- and it's not  
20 really the government introducing it -- it's in emails by  
21 Griffith, and Individual 3 says to him: What if they're  
22 funding their drug trade and nuclear program with crypto? And  
23 Griffith responds: Unlikely, but they'd probably like to start  
24 doing such, and he wrote an Ethereum colleague that he would  
25 not be pursuing the DPRK node because the U.S. president,

L9EKGRIC

1 quote, "would receive a memo that says Ethereum is funding DPRK  
2 nukes."

3 Now, I have to ask the government, why would the fact  
4 that he's not pursuing a DPRK node be relevant to your case?  
5 Maybe the defendants want to offer it, but how is that relevant  
6 to your case?

7 MS. RAVENER: Your Honor, it's relevant because that  
8 statement by the defendant wasn't true. It was weeks later  
9 that the defendant contacted the other individual affiliated  
10 with Tor proposing to crowdfund putting a node in DPRK despite  
11 his claimed walking away from the subject.

12 THE COURT: All right. So you're saying this exchange  
13 with the Ethereum Foundation and the exchange with Individual 3  
14 came after the email that I quoted that starts, I once  
15 mentioned to you the idea of doing a node in the DPRK; is that  
16 what you're saying?

17 MS. RAVENER: Your Honor, I just want to check that  
18 date. I don't want to be mistaken.

19 THE COURT: Sure.

20 Well, let me say if it's not before, then I'm inclined  
21 to exclude them. If they're after the prior communication,  
22 then I would be inclined to allow it.

23 MS. RAVENER: Understood, your Honor, and, regardless,  
24 we just want to get it right for you.

25 THE COURT: Right.

L9EKGRIC

(Pause)

MS. RAVENER: Okay. Yes, your Honor. I'm looking at the dates now. So the first statement, your Honor, is from August 24th, 2018, and the second statement where Griffith actually pursues following up with trying to get someone else to follow through on the node plan is September 23rd --

THE COURT: That's the GoFundMe one?

MS. RAVENER: Correct.

Basically, offering to crowdfund the effort.

THE COURT: All right. That's presumptively admissible subject to the defense telling me that the chronology is in error or the like.

I'm going to exclude, it seems to me, CC3 sending an article from a newspaper stating that Singapore was warning to avoid nonessential travel to the DPRK because of the six nuclear tests, that if that has any probative value, it's substantially outweighed by the danger of unfair prejudice. So that does not come in.

MR. KLEIN: Your Honor --

THE COURT: Yes.

MR. KLEIN: Your Honor, with regard to the emails or messages we're talking about, we feel very strongly that you can redact the word "nuclear," and you can redact the word "drug trade," and the government would still be able to get what it wants, but I think using the word "nuclear" in this

L9EKGRIC

1 courtroom – and it's a bad pun – it would be like dropping a  
2 nuclear bomb in this courtroom, in this case. And I think  
3 there's a way -- again, we made our position clear, it  
4 shouldn't come in at all, but we think those terms could be  
5 redacted, and you get rid of what we view as an incredible  
6 classic 403 problem there.

7 THE COURT: Well, I'll think about it. I want to hear  
8 from the government on that – I'll give them an opportunity to  
9 get me a letter on that – but I do realize that even in the 403  
10 analysis, it is significant that this is coming out of the  
11 defendant's mouth. That doesn't mean that anything that comes  
12 out of the defendant's mouth is excluded from 403; that's  
13 certainly not the case, and I think I've already excluded  
14 something under 403 that came out of the defendant's mouth.

15 It may be that in the two emails, one where it says  
16 drug trade and nuclear program, that could be redacted to read,  
17 their illicit programs and president would receive a memo that  
18 says Ethereum is funding illicit programs. But I'll give the  
19 government until Friday to get me a letter on that.

20 MS. RAVENER: Thank you, your Honor. We would like an  
21 opportunity to address that.

22 THE COURT: Okay.

23 There is the motion with regard to access to  
24 information after September 10th, 2020, that were the fruits of  
25 the search warrant. So, as I understand the facts, during some

L9EKGRIC

1 period of time ending September 10, case agents reviewed the  
2 fruits of the search warrant, which was, I gather,  
3 undifferentiated contents of certain electronic storage  
4 material and segregated that which they believed was relevant,  
5 and that that material was accessed, the segregated impertinent  
6 material was accessed, after September 10, 2020, but not by  
7 anyone on the prosecution team.

8 The defense says, be that as it may, this is, number  
9 one, either systematic and pervasive conduct, or, number two,  
10 outrageous conduct that warrants dismissal of the indictment  
11 without a showing of prejudice.

12 Now, the Second Circuit has said in, I believe it was,  
13 *United States v. Walters*, a case with which I have some  
14 familiarity, that the statement in a Supreme Court decision – I  
15 don't remember the name, something like Port Huron or Port  
16 something or other – was, it appeared to the circuit, to be  
17 dicta and that no case had ever been dismissed on the  
18 systematic evasive basis, but there is such an exception  
19 recognized by the Supreme Court for outrageous misconduct.

20 I am going to, number one, make sure that the  
21 representation that was made with regard to members of the  
22 prosecution team accessing material is correct. I'm getting  
23 more than a mere summary statement in the August 24 letter that  
24 no one did. I want declarations from all members of the  
25 prosecution team because it appears to me that if those

L9EKGRIC

1 representations are correct, the issue still exists and the  
2 defendant is still able to show that it is outrageous  
3 misconduct.

4           However, there is not, in my view, since this is not a  
5 case that's talking about prejudice to the defendant, this is  
6 an issue that can be addressed after the trial. Today, to  
7 state the obvious, is September 14th. A jury will be selected  
8 on September 27th, and, as I noted at the outset, I'm presently  
9 on trial. The issue does not disappear necessarily if  
10 Mr. Griffith is acquitted; it doesn't disappear if Mr. Griffith  
11 is convicted. If he is convicted, it may provide the basis to  
12 vacate the conviction. If he's acquitted, it may provide the  
13 basis for other remedial relief that the Court can impose, but  
14 so long as I am satisfied that the prosecution team did not  
15 access the material, I plan to go forward on September 27th. I  
16 wanted to put that on the record so that everybody knows where  
17 I am on it.

18           Now, are there other issues that the government wants  
19 to raise that I should address today?

20           MS. RAVENER: Your Honor, we do want to just note for  
21 the Court that last night, the defendant filed, for the first  
22 time, a Rule 15 motion with respect to a witness located --

23           THE COURT: Yes, this is the second, yes, deposition.  
24 Your time to respond hasn't even -- I don't know anything about  
25 it, to tell the truth, other than that a motion was filed.

L9EKGRIC

1 MS. RAVENER: Thank you, your Honor.

2 And I just want to alert the Court that we do intend  
3 to oppose that motion.

4 THE COURT: And you're going to get that in on the  
5 17th, right?

6 MS. RAVENER: We can --

7 THE COURT: Friday?

8 MS. RAVENER: We can do that, your Honor, with one  
9 request for the Court to consider: It is Yom Kippur this week,  
10 which has truncated our time.

11 THE COURT: Right.

12 MS. RAVENER: If it would be possible for the Court to  
13 accept our opposition on the following Monday?

14 THE COURT: Done. That's fine. Thank you.

15 MS. RAVENER: Thank you.

16 THE COURT: Anything else?

17 I'm going to get to you, Mr. Klein.

18 MR. KLEIN: You were just looking at me so straight,  
19 your Honor.

20 THE COURT: Okay. That's all right.

21 (Pause)

22 MS. RAVENER: Pardon me, your Honor?

23 THE COURT: One second, please.

24 MS. RAVENER: Yes.

25 THE COURT: Yes.

L9EKGRIC

1 MS. RAVENER: Pardon me, your Honor, if you could  
2 indulge us one more moment?

3 THE COURT: Yes.

4 MS. RAVENER: We do appreciate the Court is very busy  
5 on other matters.

6 THE COURT: That's all right.

7 MS. RAVENER: We also want to note, we did file a more  
8 extensive response with respect to our proposed North Korea  
9 expert, Dr. Arrington --

10 THE COURT: I know.

11 MS. RAVENER: I know it's just filed late last night.

12 -- as well as to preclude certain testimony --

13 THE COURT: What time was it last night? I know the  
14 defendants filed one at 11:46 p.m. on Friday night. When did  
15 you file yours?

16 MS. RAVENER: Your Honor, we were in a similar time  
17 range.

18 THE COURT: I thought that.

19 MS. RAVENER: So we certainly don't expect to take  
20 those issues up today, but we do want to just make sure that  
21 the Court is aware we would appreciate any guidance we could  
22 receive on those issues in advance of trial and --

23 THE COURT: Well, wait a minute.

24 MS. RAVENER: -- our response to the Court.

25 THE COURT: Listen, your expert -- are you talking



L9EKGRIC

1 about Arrington?

2 MS. RAVENER: Yes, your Honor.

3 THE COURT: What guidance didn't I give you today that  
4 you need?

5 MS. RAVENER: Your Honor, that, I think, we do  
6 understand. It's the second portion of the government's motion  
7 with respect to certain testimony that the defense seeks to  
8 offer.

9 THE COURT: OFAC testimony?

10 MS. RAVENER: No, your Honor. The defense has served  
11 subpoenas on multiple members of the FBI as well as two  
12 Department of Justice National Security Division attorneys.

13 THE COURT: Is this the under-enforcement issue?

14 MS. RAVENER: Your Honor, it appears to relate to a  
15 host of issues that we believe to be globally impermissible,  
16 inadmissible testimony. Again, the briefing is available for  
17 the Court when your Honor is ready to --

18 THE COURT: But, listen, I have to read it, but --

19 MS. RAVENER: Of course.

20 THE COURT: -- you're giving me a preview. You're  
21 saying when you read it, you will not know what these witnesses  
22 are for. Isn't that what you're telling me?

23 MS. RAVENER: No, your Honor. And let me do a better  
24 job, if I can try.

25 THE COURT: Okay, sure.

L9EKGRIC

1 MS. RAVENER: I'm going to turn this over, actually,  
2 to my colleague.

3 THE COURT: Good.

4 MS. RAVENER: Thank you.

5 MR. WIRSHBA: Your Honor, so the government filed a  
6 brief last night, and it was very late, that attached a letter  
7 from the defense seeking to admit testimony from certain FBI  
8 agents and certain attorneys within the National Security  
9 Division related to a host of different topics. The government  
10 attached that letter and made arguments about why those topics  
11 should be inadmissible at trial.

12 If it's helpful, your Honor, it's Exhibit D to the  
13 motion filed last night.

14 THE COURT: One second, please.

15 (Pause)

16 THE COURT: So this is Exhibit A?

17 MR. WIRSHBA: No, your Honor. The letter from the  
18 defense is Exhibit D.

19 THE COURT: Hang on a second now.

20 MR. WIRSHBA: And the government's brief on this topic  
21 begins at page 22.

22 THE COURT: Well, the first topic sounds to me like  
23 the under-enforcement issue, the FBI's assessment and  
24 enforcement of the North Korea sanctions regulations. Maybe  
25 it's not precisely under-enforcement, it's enforcement

L9EKGRIC

1 philosophy. That's that.

2 The second topic is FBI's coordination and  
3 communications with representatives of the Department of State  
4 regarding Griffith's alleged activities purportedly related to  
5 North Korea prior to, during, and following the cryptocurrency  
6 conference.

7 Why is that relevant?

8 MR. BUCKLEY: Your Honor, if I may, just to set the  
9 table here or set the stage for us a little bit. This letter  
10 is not a letter seeking to admit various topics of testimony.  
11 This is a letter required by the *Touhy* regulations, where we  
12 are required to provide notice to the government of the various  
13 topics that we may seek to offer testimony for. We haven't had  
14 an opportunity, obviously, to respond to the government's  
15 submission.

16 I will note that the government indicated in its  
17 submission that we had met and conferred regarding these  
18 topics. That's not accurate. We had a preliminary  
19 conversation to front the issue. We had agreed to have further  
20 discussions about it. And I think, in view of the Court's  
21 rulings here today --

22 THE COURT: There will be further discussions?

23 MR. BUCKLEY: Yes, your Honor.

24 And the other point I wanted to raise with the Court,  
25 though, is the point that the Court made earlier, which is, the

L9EKGRIC

1 defense goes second, right -- withdraw the right, your Honor --  
2 the defense goes second. We have to provide this notice at  
3 this stage of the proceedings. We don't know what doors  
4 they're going to open.

5 THE COURT: I understand, I understand, and that's  
6 true.

7 But what I am going to direct you to do is confer.

8 MR. BUCKLEY: Understood, your Honor.

9 THE COURT: Both sides have a bit more than what they  
10 knew before, as a result of today's conference.

11 Now, does that complete the government's list of  
12 things they wanted me to address?

13 MR. WIRSHBA: Your Honor, there is one additional  
14 thing. If your Honor is planning to take up the search warrant  
15 issue after trial, with the assistance of the declarations that  
16 you've ordered for Friday, the government would ask to be able  
17 to put over its briefing until after trial as well and supply  
18 the declarations that your Honor has requested.

19 THE COURT: No, no, no, no. You're going to supply  
20 the declarations -- if you're telling me you need till Monday  
21 on the declarations, that's a different story, but the  
22 declarations come before the trial.

23 MR. WIRSHBA: Absolutely, your Honor. We're supplying  
24 the declarations on Friday, as ordered.

25 The government also suggested that it might file a

L9EKGRIC

1 brief on Friday. With the Court's permission, if the Court is  
2 putting off that issue until after trial, the government would  
3 request to adjourn that deadline until after trial, but, of  
4 course, we will be putting in the declarations as ordered.

5 THE COURT: Well, the thing I want you to respond to  
6 is, if you look at what I said in my order, as opposed to what  
7 the defendant is, I didn't ask you to respond to the motion to  
8 dismiss by Friday. That's not in my order.

9 MR. WIRSHBA: Understood, your Honor.

10 THE COURT: But what I did ask you to do was to  
11 respond to the defense's request for certain information.  
12 That's in my order.

13 MR. WIRSHBA: We will do that, your Honor.

14 THE COURT: Okay.

15 Now, with regard to the response to the motion to  
16 dismiss, I will hold that in abeyance. If I find, based on  
17 what I get on Friday, that there's a need to, I will let you  
18 know; if not, then I would put it off until after the trial.

19 MR. WIRSHBA: Understood, your Honor.

20 THE COURT: All right.

21 Mr. Klein?

22 MR. KLEIN: Your Honor, two points on that:

23 One was, our motion is also a motion to suppress in  
24 the alternative --

25 THE COURT: Yes.

L9EKGRIC

1 MR. KLEIN: -- all the evidence that was hosted on  
2 Palantir, and that would need to be decided before trial, your  
3 Honor.

4 THE COURT: Yes. Well, I can tell you right now, if  
5 the government does what I've asked them to do, then implicit  
6 in my ruling that the trial goes forward, subject to your  
7 motion, if you persuade me that it's outrageous misconduct,  
8 it's a multistep process. I suppose I could just jump to  
9 dismissing the indictment or I could suppress the evidence, in  
10 which event, there may be insufficient evidence to support the  
11 indictment, but it would get you to the same place if I  
12 concluded there was outrageous misconduct.

13 MR. KLEIN: Your Honor, the suppression isn't premised  
14 on outrageous conduct. I think if you read our brief, your  
15 Honor, that's not the standard we need to meet.

16 THE COURT: Well, I have read your brief. I didn't  
17 read the brief the government filed last night. I read your  
18 brief.

19 MR. KLEIN: So, then, the Fourth Amendment suppression  
20 is not premised on outrageous conduct. That's not the standard  
21 that would need to be applied here for the Court to suppress  
22 the evidence we're seeking to suppress.

23 THE COURT: So tell me the standard. Don't hold me in  
24 suspense.

25 MR. KLEIN: So, your Honor, on page 9 and 10 here --

L9EKGRIC

1 THE COURT: Right.

2 MR. KLEIN: If you turn to page 8, 9, and 10 --

3 THE COURT: Go ahead.

4 MR. KLEIN: I'm grabbing it, your Honor.

5 THE COURT: I'm not surprised you're reading it.

6 You're trying to figure out what it is. I got it.

7 MR. KLEIN: I didn't intend to argue this motion  
8 today, your Honor.

9 THE COURT: No, I got it, I got it, there's a lot on  
10 your plate.

11 MR. KLEIN: So, your Honor, on page 9 --

12 THE COURT: Yeah, you say: Flagrant disregard of the  
13 warrant's terms, the drastic remedy of suppression of all  
14 evidence seized may be justified. All right.

15 And what I'm saying is, because -- listen, you found  
16 out about this on August 24th, time is short, trial was a  
17 little bit over a month away, and you didn't know everything  
18 that you knew last Friday night at 11:46, but you filed your  
19 motion Friday night at 11:46. Friday night was September 10th,  
20 today is September 14th, and we're going to trial on  
21 September 27th.

22 The ground that you assert is an assessment of whether  
23 it's outrageous misconduct, whether it's flagrant disregard.  
24 It's not a different standard. It's not as if there is a  
25 doctrine which said that is independent of the doctrines

L9EKGRIC

1 intertwined with your motion to dismiss the indictment. And  
2 I'm going to take that up after the trial, and that will be  
3 true with the suppression issue.

4 If the government is able to make clean  
5 representations along the lines I indicated, then I am not  
6 suppressing the evidence prior to trial, I'm not dismissing the  
7 indictment, but the issue is reserved until after trial.

8 MR. KLEIN: Yes, your Honor.

9 THE COURT: That's my ruling.

10 MR. KLEIN: And, your Honor, one point on that point  
11 moving on.

12 THE COURT: Right, sure.

13 MR. KLEIN: In terms of members of the prosecution  
14 team who are submitting declarations on Friday, the defense  
15 would understand that would include individuals at OFAC who  
16 were involved in this case because the government -- the Court  
17 had previously found that OFAC was part of the prosecution  
18 team.

19 THE COURT: When did I find that?

20 MR. KLEIN: When we moved to compel evidence, your  
21 Honor related to OFAC, and your Honor found -- and, again, it's  
22 not precisely in those words, but your Honor ordered the  
23 government to produce evidence related to OFAC because OFAC got  
24 entangled with the FBI in terms of the investigation of this  
25 case.



L9EKGRIC

1 THE COURT: I'll hear from the government on that one.

2 MR. WIRSHBA: Your Honor, that's not the government's  
3 understanding of your Honor's order when you made it with  
4 respect to OFAC. Your Honor ordered the government to conduct  
5 a review for certain materials at OFAC, but it is not the case  
6 that there are individuals at OFAC who are on the prosecution  
7 team. No one at OFAC has participated in a witness interview,  
8 reviewed any of the evidence in any of the search warrants, or  
9 any other of the indicia of being on the prosecution team.

10 THE COURT: Well, see, here's the issue I have: If  
11 there is a clean representation from the case agents, the  
12 prosecutors, those working with them in putting together this  
13 case, that clean representation, by my recollection of my own  
14 order, says, and that they're not aware of anyone else having  
15 access to the information.

16 So that would mean that if someone at OFAC did  
17 something -- and maybe it's outrageous mis -- I'm not going to  
18 rule on that now, but if OFAC did something, the government, as  
19 they sit here today, the prosecution, doesn't even know what  
20 that information was. I'm not going to require them to learn  
21 the prohibited information at this juncture. So that's why, as  
22 a practical matter, I'm going to stick to where I am.

23 MR. KLEIN: Your Honor, moving on, we had filed a  
24 motion, a letter motion, regarding Coinbase.

25 THE COURT: Yes. Let me -- not to cut you off, but

L9EKGRIC

1 let me say this about it: This is accessing something at  
2 Coinbase. You're a good lawyer, you've got a good team  
3 together, and I'm going to assume that this really wasn't  
4 thought through, but there is no set of facts under which the  
5 Court could have signed the order you proposed – none  
6 whatsoever. They, in effect, adjudicate Mr. Griffith's  
7 ownership of this account. They adjudicate whether there are  
8 any claims or liens of third persons, and this is all done  
9 without notice or an opportunity to be heard by Coinbase.

10 Mr. Klein, have you read the order recently? Maybe a  
11 member of your team has the order. Take a look at it.

12 MS. AXEL: I have it, your Honor.

13 THE COURT: Yes. Basically, I order nonparty Coinbase  
14 to release funds in this account to Mr. Griffith. Maybe you  
15 might have wanted to say, Judge, can you enter an order that  
16 says there is nothing in United States against Virgil Griffith,  
17 20 CR 15, that restricts Coinbase's ability to release bonds –  
18 that might be something we could have a discussion on – but the  
19 form of the order does not work.

20 MS. AXEL: Okay, your Honor, yes, we have been in  
21 communications with Coinbase, and I think the fear is exactly  
22 that they just don't want to step on any toes, particularly in  
23 light of the prior briefings that we've had in this case.

24 My understanding is they have no objection to handing  
25 this money over to somebody and liquidating the account and, in

L9EKGRIC

1 fact, have expressed a preference toward liquidating the  
2 account. The form of how to do that exactly, you know, I'm  
3 happy to go back to them and make sure that this form is  
4 acceptable to them and resubmit to the Court.

5 THE COURT: Right. But I want to hear what the  
6 government's position is on an order which says, in essence,  
7 there is nothing in United States against Virgil Griffith which  
8 precludes Mr. Griffith seeking property owned by him from a  
9 third party such as Coinbase.

10 MS. RAVENER: Your Honor, that does strike the  
11 government as infinitely more appropriate than the order sought  
12 by the defense, both for the procedural issues and other  
13 reasons outlined by the Court.

14 We will just put on the record that those funds remain  
15 subject to ongoing investigation, from the government's  
16 perspective. We have concerns about those funds. We obviously  
17 have no order restraining them – that is true, we aren't  
18 seeking one now, your Honor – but when the defense sought our  
19 consent initially, we advised them that we could not provide  
20 such consent and, in part, asked them to identify to us what  
21 was the provenance of those funds. They represented to us that  
22 those funds, they believed, to be the product of Mr. Griffith's  
23 salary at Ethereum. Based on the facts available to the  
24 government, that does not comport with what we know, and, as a  
25 result, we could not provide our consent with respect to that

L9EKGRIC

1 particular account. All of that is just to highlight for the  
2 Court -- in addition, by the way, to the lack of clarity, given  
3 Mr. Griffith's own statements, as to whether these funds could  
4 be subject to an IRS lien or have been properly accounted for  
5 here -- that there could be other issues beyond any of our  
6 knowledge and that we don't believe it's appropriate to enter  
7 anything more than to say that the funds are not restricted  
8 pursuant to this criminal case, as the Court has said.

9 THE COURT: Okay.

10 So you'll get me a revised order on notice to the  
11 government, and I would ask the government to respond within  
12 two business days of receiving the proposed order.

13 Then, if there's no objection, and it's in a properly  
14 formed order, I'll enter it. All right?

15 And no harsh criticism intended by the form of the  
16 order, but I couldn't do that --

17 MR. KLEIN: Your Honor, we will revise it and submit  
18 it to you. Thank you for -- there's a few very minor  
19 logistical, but quick things.

20 THE COURT: Sure. Go ahead.

21 MR. KLEIN: One, we would like your Honor to permit  
22 Ms. Axel and I and anybody to bring phones and laptops into the  
23 court.

24 THE COURT: Well, certainly laptops, what you should  
25 do is contact my deputy during business hours, and she may be

L9EKGRIC

1 able to assist you, but there is a form of an order that you  
2 would have to submit, and the cell phone restriction has been  
3 lifted during the pandemic for trial participants.

4 MR. KLEIN: Ah, okay.

5 THE COURT: So if you're a trial participant, it's  
6 lifted, and there's a good reason for that -- because we're in a  
7 different period. I've lived through the most strictly  
8 enforced period of this pandemic, and we still have strict  
9 enforcement, but you really could not take off a facemask to  
10 communicate with a member of your staff, and you're limited,  
11 you will be limited in the number of people who will be at  
12 counsel table. So it's important that you be able to text  
13 someone to say, bring in the next witness or I need this  
14 document or the like. So that's going to be permissible.  
15 You'll be fine there.

16 MR. KLEIN: Yes, your Honor, we appreciate that.

17 Do we need to bring a copy of the docket, or we should  
18 talk to your deputy about how we --

19 THE COURT: No, no. I don't know how the CSOs go  
20 about it, but as Mr. Buckley could suggest, although he always  
21 waved his way in, so maybe he doesn't know anything about this,  
22 is a possibility, but usually what happened is the CSOs would  
23 call up chambers and say, there's some guy by the name of Klein  
24 who thinks he has a case before the judge, is he for real,  
25 should we let him bring his phone and --

L9EKGRIC

1 MR. KLEIN: You can send me home some days, if you  
2 want, your Honor.

3 THE COURT: -- we'll take care of that, but I don't  
4 think there's any order there. If you need an order or you get  
5 hassled, then we'll give you an order, but most lawyers don't  
6 seem to have a problem with what I just described.

7 MR. KLEIN: Your Honor, clothes for Mr. Griffith  
8 during trial?

9 THE COURT: You need to get me an order.

10 MR. KLEIN: Yes.

11 THE COURT: It's an order to the marshals, and you  
12 have to supply the clothes to the marshals. Your job is to  
13 talk to the marshals and find out what they need, but one of  
14 the things they do need is an order from me. You'll get that  
15 to me, and I'll sign it.

16 MR. KLEIN: Yes, your Honor.

17 Mr. Griffith's family has inquired about, and I know  
18 you mentioned the restrictions about attendance, but obviously  
19 his parents are very interested in attending his trial and  
20 maybe some friends and family.

21 THE COURT: Here is the story: It's probably worth  
22 your while to go into one of the courtrooms where one of these  
23 trials are taking place. I'm, these days, up in 23B. I have  
24 no idea where this trial will take place, but there are seating  
25 restrictions, as there are today, on where you can sit and

L9EKGRIC

1 social distancing.

2 So, subject to those restrictions, the family is  
3 welcome to be in the courtroom. I think what I will do for  
4 this case is provisionally set up an overflow arrangement, and  
5 the overflow room will probably be right here. So we will do  
6 that, and I think usually the CSOs are pretty good if you say  
7 it's family, if they're mother and father, not if 45 people say  
8 we're family, that might not go so well.

9 MR. KLEIN: Yes.

10 THE COURT: But if there's a mother and father, I  
11 fully expect the CSOs will accommodate in the actual courtroom  
12 rather than the overflow, but I can't guarantee that.

13 MR. KLEIN: Yes, one of our questions was on that.

14 Are exhibits handled differently now?

15 THE COURT: Yes. All electronic. Unless it's  
16 physical evidence, it's all electronic.

17 One of the things you need to do is, you need to  
18 prepare a USB drive – and this is going to be the job of the  
19 government – with all admitted exhibits and an index to the  
20 admitted exhibits. So you'll get your admitted exhibits,  
21 unless the government has already loaded them on there, and  
22 that goes into the jury room during deliberations, and they  
23 will have an electronic device -- it's not a laptop, they're  
24 going to have a full-sized large monitor, several of them, but  
25 they will be instructed on how to access the exhibits on the

L9EKGRIC

1 USB drive.

2 MR. KLEIN: During the course of the trial, everything  
3 is going to be electronic, no paper exhibits?

4 THE COURT: No paper exhibits, yes.

5 MR. KLEIN: Okay.

6 THE COURT: And there are, I won't say, no possibility  
7 of a sidebar, but no sidebar. I finished a trial over the  
8 summer where, in two weeks, there were literally no sidebars.  
9 The case I have on trial now is a criminal case; there have  
10 been no sidebars. We take things up on breaks. I'm not saying  
11 never, I'm not saying it couldn't happen, but it's got to be  
12 something that really couldn't have been anticipated.

13 MR. KLEIN: Your Honor, there's one other issue, and  
14 this -- we know you don't run the MCC, but we have had real  
15 difficulty getting access to our client, and there has been  
16 some suggestion that he may be moved to the MDC and put in  
17 quarantine for 14 days, which makes it so that he couldn't --  
18 potentially, we're not sure exactly of all the rules because  
19 they're constantly --

20 THE COURT: Well, that's going to be -- the government  
21 can't go to trial if there isn't a defendant. I really frown  
22 on absentee trials. So if the government wants to go to trial  
23 on September 27th, they're going to need to be able to have a  
24 defendant who can be here and can be returned to the place of  
25 incarceration, or you don't get a trial or Mr. Griffith gets



L9EKGRIC

1 released. Those are about the only options.

2 I have not — and I think I would — get the warning  
3 that the MCC is going to be closed down, everybody's going to  
4 the MDC, but I think if I was down to the 72-hour mark or the  
5 five-day mark, I probably would know, and I haven't heard that  
6 yet, but it's on the government's shoulders to make sure that I  
7 have a defendant on September 27th and all succeeding days.

8 MR. KLEIN: Yes.

9 MS. RAVENER: Your Honor, that's the first we've heard  
10 of any concern of that nature, and we will look into it.

11 THE COURT: Okay.

12 MR. KLEIN: And just to be clear, we would request  
13 that he stay at the MCC through trial, assuming it's open and  
14 they don't shut the whole facility down.

15 THE COURT: Sure, sure. Well, yes, me, too. I'm with  
16 you on that. Great idea. I can't get it through my head what  
17 it would be like if defendants have to be produced from the MDC  
18 every day for trial. Things are -- I guess I'm requesting to  
19 be learning about that because when they lock the door on the  
20 MCC, I guess that's what will happen.

21 MR. KLEIN: Yes, your Honor. Thank you for -- let me  
22 just check and make sure there's nothing else, but I think that  
23 is it, your Honor.

24 THE COURT: Hang on now.

25 (Pause)

L9EKGRIC

1 THE COURT: Well, listen, my first thanks go to my  
2 wonderful court reporter who has stayed with us tonight – thank  
3 you, Andrew – and thank you for the very fine briefing on  
4 everything. It was a pleasure to read good briefing.

5 MR. KLEIN: Your Honor, three seconds?

6 THE COURT: Yes.

7 MR. KLEIN: Just we're not sure how long the  
8 government's case is going to be in chief right now, so we'd  
9 ask that we get some information on that. We'd also ask for --  
10 if your Honor has anticipation for opening statements, how long  
11 you anticipate, we'll work that out when we arrive for the  
12 trial.

13 THE COURT: No, no, we're not going to work it out  
14 when we arrive. This is always a painful part of the process,  
15 but I'll ask: How long does the government think it wants for  
16 its opening statement?

17 MS. RAVENER: Your Honor, approximately 20 minutes.

18 THE COURT: Okay.

19 And yours will be that or less, I assume, yes?

20 MR. KLEIN: We were hoping for half an hour, your  
21 Honor.

22 THE COURT: I think it's fair, then I'm going to  
23 expand the government's.

24 MR. KLEIN: Fine.

25 THE COURT: But, no, I could do that, I think I'm

L9EKGRIC

1 going to limit both sides to 20 minutes. That should be  
2 adequate for the case. So let's limit it to 20 minutes.

3 Jury selection, you may or may not know -- well, what  
4 happens on the morning of trial: You're going to go to the  
5 courtroom, we're going to tell you what courtroom to go to.  
6 There will be no jurors there. But that's where we'll  
7 assemble. Then we're going to head down to the jury assembly  
8 room, and the jury selection process will take place in there.  
9 And there will be room at counsel table, generally speaking,  
10 for two prosecutors and two defense counsel and the defendant.  
11 Sometimes, in a one-defendant case, we can do better than that;  
12 I can't promise that in the jury assembly room. And then when  
13 there's a sidebar, usually, it will be one attorney from each  
14 side at the sidebar with the jurors. There's a little bit more  
15 flexibility on the final strikes. I realize that that's a  
16 little bit logistically difficult, and we can accommodate more.

17 What else?

18 MS. AXEL: Can I ask a question about that, your  
19 Honor?

20 THE COURT: Sure.

21 MS. AXEL: The COVID list that applies when we have to  
22 come into the courtroom, that basically you report if you have  
23 really any symptoms of the common cold. Is that the same list  
24 for jurors, and does that give them an opportunity to  
25 essentially avoid service or decide whether they want to

L9EKGRIC

1 participate?

2 THE COURT: Well, I don't know, what did you do when  
3 you came in today? Because the questions have been changed. I  
4 personally -- me, as a judge of this court -- have to do this  
5 every day I am in the courthouse. There's the QR code, you  
6 scan it, you're asked the question are you fully vaccinated,  
7 and so on and so forth. If not, then you -- if you have COVID  
8 symptoms or you have been to a quarantine location or in  
9 contact with a person who has COVID, you're not immediately  
10 allowed in. What happens is, there is a COVID response team  
11 available in this court by phone that makes a determination of  
12 whether or not it is safe for that person to come into the  
13 courthouse, period. But it's not the CSOs' job to enforce that  
14 as such. If someone cannot come in under the restrictions,  
15 they should so indicate, and then we'll get an indication from  
16 the team.

17 But, most emphatically, we are not collecting data on  
18 whether jurors have or have not been vaccinated. An  
19 unvaccinated juror is welcome to serve. We don't say, are you  
20 vaccinated or not vaccinated? It's not part of the voir dire  
21 process. There is, obviously, the need to know -- maybe the  
22 person tested positive for COVID, we would need to know that in  
23 order to be able to restrict that person from infecting other  
24 people in the building, but that is isolated from the jury  
25 selection process.

L9EKGRIC

1 MR. KLEIN: Your Honor, the government's estimate for  
2 the length of trial, it would also be helpful to us, your  
3 Honor, in our planning.

4 THE COURT: What do you think you need for the length  
5 of this trial, as I have now -- I've made it a more efficient  
6 trial for you, for one thing, right?

7 MS. RAVENER: Your Honor, our estimates are the same  
8 as they've always been. We anticipate that the government's  
9 case could be completed in approximately a week and may go into  
10 two, and we hope, though we don't know at all what the  
11 defense's case may be, but it may be completed in two weeks.

12 We'd also just note that we've already produced  
13 approximately 180 exhibits to the defense as well as 3500  
14 material for many witnesses.

15 THE COURT: Okay.

16 So everything you've said is consistent with what I've  
17 heard and known all along, so...

18 MR. KLEIN: And, your Honor, hopefully, we will pick a  
19 jury and get to opening statements right away. Could we ask  
20 for the government's, at least, first day witness list a few  
21 days in advance?

22 THE COURT: You guys are going to talk to each other.

23 MR. KLEIN: Okay.

24 THE COURT: I'm not refereeing this. I don't want to  
25 hear about battles back and forth. Talk to each other. And

L9EKGRIC

1 this is a case where it's likely that there will be a defense  
2 case, and sauce for the goose is sauce for the gander, and the  
3 one thing I won't tolerate, because I've actually had lawyers  
4 who have tried this, is, oh, well, you're going to give me 24,  
5 48 hours on the government's case and your witnesses, and, of  
6 course, I'll do the same, and then it gets to the defense case,  
7 and they go ha-ha-ha, I'm not going to do that. And that would  
8 not go well. Of course, they don't say with a ha-ha-ha, they  
9 just say, oh, your Honor, this is all unexpected and I didn't  
10 know.

11 But talk to the government, work it out. You have  
12 things to talk about, including your subpoenas. You need to  
13 talk.

14 MR. KLEIN: We will do so. We have been talking, your  
15 Honor. We talked before we came in here.

16 THE COURT: Okay. Good. What else?

17 MS. RAVENER: Nothing further from the government,  
18 your Honor.

19 MR. KLEIN: Nothing further from the defense, your  
20 Honor.

21 THE COURT: Okay, that's good. So I will see you on  
22 September 27th, 9:30 a.m., in the courtroom that we're assigned  
23 to. Stay well until then. Be well.

24 MR. KLEIN: Thank you, your Honor.

25 MS. RAVENER: Thank you, your Honor. \* \* \*